

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP**
4 12 Williamsburg Lane
5 Chico, CA 95926
6 Telephone: (530) 895-3252
7 Facsimile: (530) 894-8244

8 Attorneys for Plaintiff

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

'08 CV 0695 H POR

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 LARRY McIVER,

12 Plaintiff,

13 vs.

14 S. B. RESTAURANT CO. dba
15 ELEPHANT BAR RESTAURANT;
16 GUARANTY BANK,
17 Defendants.

18 No.

19 **Plaintiff's Complaint**

I. SUMMARY

1. This is a civil rights action by plaintiff Larry McIver ("McIver") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Elephant Bar Restaurant
105 South Las Posas Road
San Marcos, CA 92078
(hereafter "the Restaurant")

2. McIver seeks damages, injunctive and declaratory relief, attorney fees and costs, against S. B. Restaurant Co. dba Elephant Bar Restaurant and Guaranty Bank (hereinafter collectively referred to as "Elephant Bar") pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. McIver's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Elephant Bar owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

- 1 • The side grab bar inside the men's restroom's accessible stall does not
- 2 extend 24 inches in front of the water closet;
- 3 • The water closet obstructs the clear floor space required to access the
- 4 disposable seat cover dispensers in the men's restroom's accessible stall;
- 5 • There is no loop or U-shaped handle mounted below the latch on the
- 6 accessible stall door in the men's restroom;
- 7 • The soap dispenser in the men's restroom is out of the required reach
- 8 range; and,
- 9 • There is insufficient strike side clearance on the restroom door (when
- 10 exiting) due to the paper towel dispenser.

11 These barriers prevented McIver from enjoying full and equal access.

12 11. McIver was also deterred from visiting the Restaurant because he
13 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
14 accommodations were unavailable to physically disabled patrons (such as
15 himself). He continues to be deterred from visiting the Restaurant because of the
16 future threats of injury created by these barriers.

17 12. McIver also encountered barriers at the Restaurant, which violate
18 state and federal law, but were unrelated to his disability. Nothing within this
19 Complaint, however, should be construed as an allegation that McIver is seeking
20 to remove barriers unrelated to his disability.

21 13. Elephant Bar knew that these elements and areas of the Restaurant
22 were inaccessible, violate state and federal law, and interfere with (or deny)
23 access to the physically disabled. Moreover, Elephant Bar has the financial
24 resources to remove these barriers from the Restaurant (without much difficulty
25 or expense), and make the Restaurant accessible to the physically disabled. To
26 date, however, Elephant Bar refuses to either remove those barriers or seek an
27 unreasonable hardship exemption to excuse non-compliance.

28

14. At all relevant times, Elephant Bar has possessed and enjoyed sufficient control and authority to modify the Restaurant to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Elephant Bar has not removed such impediments and has not modified the Restaurant to conform to accessibility standards. Elephant Bar has intentionally maintained the Restaurant in its current condition and has intentionally refrained from altering the Restaurant so that it complies with the accessibility standards.

15. McIver further alleges that the (continued) presence of barriers at the Restaurant is so obvious as to establish Elephant Bar's discriminatory intent.¹ On information and belief, McIver avers that evidence of this discriminatory intent includes Elephant Bar's refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Restaurant; conscientious decision to the architectural layout (as it currently exists) at the Restaurant; decision not to remove barriers from the Restaurant; and allowance the Restaurant continues to exist in its non-compliant state. McIver further alleges, on information and belief, that Elephant Bar is not in the midst of a remodel, and that the barriers present at the Restaurant are not isolated (or temporary) interruptions in access due to maintenance or repairs.²

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. McIver incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal

¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

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1 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
2 offered by any person who owns, operates, or leases a place of public
3 accommodation. 42 U.S.C. § 12182(a).

4 18. Elephant Bar discriminated against McIver by denying “full and
5 equal enjoyment” and use of the goods, services, facilities, privileges or
6 accommodations of the Restaurant during each visit and each incident of
7 deterrence.

8 Failure to Remove Architectural Barriers in an Existing Facility

9 19. The ADA specifically prohibits failing to remove architectural
10 barriers, which are structural in nature, in existing facilities where such removal
11 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
12 achievable” is defined as “easily accomplishable and able to be carried out
13 without much difficulty or expense.” *Id.* § 12181(9).

14 20. When an entity can demonstrate that removal of a barrier is not
15 readily achievable, a failure to make goods, services, facilities, or
16 accommodations available through alternative methods is also specifically
17 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

18 21. Here, McIver alleges that Elephant Bar can easily remove the
19 architectural barriers at the Restaurant without much difficulty or expense, and
20 that Elephant Bar violated the ADA by failing to remove those barriers, when it
21 was readily achievable to do so.

22 22. In the alternative, if it was not “readily achievable” for Elephant Bar
23 to remove the Restaurant’s barriers, then Elephant Bar violated the ADA by
24 failing to make the required services available through alternative methods,
25 which are readily achievable.

1 Failure to Design and Construct an Accessible Facility

2 23. On information and belief, the Restaurant was designed or
3 constructed (or both) after January 26, 1992—independently triggering access
4 requirements under Title III of the ADA.

5 24. The ADA also prohibits designing and constructing facilities for
6 first occupancy after January 26, 1993, that aren't readily accessible to, and
7 usable by, individuals with disabilities when it was structurally practicable to do
8 so. 42 U.S.C. § 12183(a)(1).

9 25. Here, Elephant Bar violated the ADA by designing or constructing
10 (or both) the Restaurant in a manner that was not readily accessible to the
11 physically disabled public—including McIver—when it was structurally
12 practical to do so.³

13 Failure to Make an Altered Facility Accessible

14 26. On information and belief, the Restaurant was modified after
15 January 26, 1992, independently triggering access requirements under the ADA.

16 27. The ADA also requires that facilities altered in a manner that affects
17 (or could affect) its usability must be made readily accessible to individuals with
18 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
19 an area that contains a facility's primary function also requires adding making
20 the paths of travel, bathrooms, telephones, and drinking fountains serving that
21 area accessible to the maximum extent feasible. *Id.*

22 28. Here, Elephant Bar altered the Restaurant in a manner that violated
23 the ADA and was not readily accessible to the physically disabled public—
24 including McIver—to the maximum extent feasible.

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28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

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1 Failure to Modify Existing Policies and Procedures

2 29. The ADA also requires reasonable modifications in policies,
3 practices, or procedures, when necessary to afford such goods, services,
4 facilities, or accommodations to individuals with disabilities, unless the entity
5 can demonstrate that making such modifications would fundamentally alter their
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7 30. Here, Elephant Bar violated the ADA by failing to make reasonable
8 modifications in policies, practices, or procedures at the Restaurant, when these
9 modifications were necessary to afford (and would not fundamentally alter the
10 nature of) these goods, services, facilities, or accommodations.

11 31. McIver seeks all relief available under the ADA (*i.e.*, injunctive
12 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
13 U.S.C. § 12205.

14 32. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
15 that Elephant Bar violated the ADA in order to pursue damages under
16 California's Unruh Civil Rights Act or Disabled Persons Act.

17 VII. SECOND CLAIM

18 **Disabled Persons Act**

19 33. McIver incorporates the allegations contained in paragraphs 1
20 through 30 for this claim.

21 34. California Civil Code § 54 states, in part, that: Individuals with
22 disabilities have the same right as the general public to the full and free use of
23 the streets, sidewalks, walkways, public buildings and facilities, and other public
24 places.

25 35. California Civil Code § 54.1 also states, in part, that: Individuals
26 with disabilities shall be entitled to full and equal access to accommodations,
27 facilities, telephone facilities, places of public accommodation, and other places
28 to which the general public is invited.

44. Elephant Bar's aforementioned acts and omissions denied the physically disabled public—including McIver—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against McIver by violating the Unruh Act.

46. McIver was damaged by Elephant Bar's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

47. McIver also seeks to enjoin Elephant Bar from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. McIver incorporates the allegations contained in paragraphs 1 through 13 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

51. McIver alleges the Restaurant is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Restaurant was not exempt under Health and Safety Code § 19956.

1 52. Elephant Bar's non-compliance with these requirements at the
2 Restaurant aggrieved (or potentially aggrieved) McIver and other persons with
3 physical disabilities. Accordingly, he seeks injunctive relief and attorney fees
4 pursuant to Health and Safety Code § 19953.

5 X. PRAYER FOR RELIEF

6 WHEREFORE, McIver prays judgment against Elephant Bar for:

- 7 1. Injunctive relief, preventive relief, or any other relief the Court deems
8 proper.
- 9 2. Declaratory relief that Elephant Bar violated the ADA for the purposes of
10 Unruh Act or Disabled Persons Act damages.
- 11 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
12 California Civil Code (but not both) according to proof.
- 13 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 14 5. Interest at the legal rate from the date of the filing of this action.

15
16 DATED: April 15, 2008

DISABLED ADVOCACY GROUP, APLC

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19 LYNN HUBBARD, III
20 Attorney for Plaintiff Larry McIver
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⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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Plaintiff's Complaint

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LARRY McIVER

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

DEFENDANTS

S. B. RESTAURANT CO. dba THE PHANZ BAR
RESTAURANT; GUARANTY BANK

County of Residence of First Listed Defendant SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

DEPUTY

08 APR 16 2008
CLERK, U.S. DISTRICT COURT
08 CV 0695 H POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|-----------------------------------------|--------------------------------|--------------------------------|---------------------------------------------------------------|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> CONTRACT	<input type="checkbox"/> TORTS	<input type="checkbox"/> FORFEITURE/PENALTY	<input type="checkbox"/> BANKRUPTCY	<input type="checkbox"/> OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/15/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

149826

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

MS 4/16

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149826 - MS

**April 16, 2008
15:10:16**

Civ Fil Non-Pris

USAO #: 08CV0695 H

Judge.: MARILYN L HUFF

Amount.: \$350.00 CC

Total-> \$350.00

FROM: LARRY MCIVER